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SUBJECT: Financial Systems Assessment for Tanzania

1. (SBU) Summary: A multi-agency team from Washington and the European Union visited Tanzania to assess Tanzania's compliance with international standards to combat money laundering and terrorist financing. Their full report follows below. While Tanzania has signed and/or ratified the relevant international agreements, its capacity to enforce the standards is extremely limited. New legislation has been drafted but not yet passed that would extend the definition of institutions covered by central bank (BOT) supervision, formalize requirements for customer identification and suspicious transaction reporting, and establish a Financial Intelligence Unit (FIU). Tanzania lacks law enforcement and investigations expertise, and bank examiners lack AML/CFT training. The team makes a number of recommendations (see paragraph 29). End Summary.

BEGIN TEXT OF FSAT REPORT --INTRODUCTION

2. (U) A financial systems assessment team (FSAT) comprised of Rob Stapleton, State S/CT, Carol Mesheske, State INL/C, Susan Smith, DOJ/AFMLS, David Brassanini, FBI, Mary Jo Melancon, FinCEN, Margreet Wenting, The Netherlands Ministry of Finance, and Kai Kristoffersen, a private consultant contracted by the Danish Ministry of Foreign Affairs, traveled to Dar es Salaam and Zanzibar, Tanzania the week of March 7-11, 2005. Wayne Blackburn, the UN Mentor to the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) and Jerry Rowe and Bill Gilligan, Treasury OTA, also participated in portions of the assessment. The purpose of the assessment was to determine Tanzania's compliance with international standards to combat money laundering and terrorist financing. This is also the first FSAT that had two European Union (EU) members on the team in an effort to build cooperation and coordination on the training and technical assistance front. The team met with the Directors of Public Prosecution for both the Mainland and Zanzibar, the Tanzania Revenue Authority, which is responsible for customs, the Ministry of Finance, the Multi-Disciplinary Committee for Money Laundering, the Ministry of Foreign Affairs, the Bank of Tanzania (BoT), the Tanzania Bankers Association, the Police Commissioner and the Director of Criminal Investigation, the Registrar for Non-Governmental Organizations, the Zanzibar Ministry of Finance, the Attorney General of Zanzibar, and a group of Zanzibari Bankers. The team also met with Mr. Michael Owen, the Charge d'Affaires for the United States, Mr. Carsten Nilas Pedersen, the Danish Ambassador to Tanzania, and Emile de Bont, head of the Economic & Trade promotion department at the Dutch Embassy in Dar es Salaam. Below are the findings of the team and recommendations for training and technical assistance for the Government of Tanzania (GoT).

3. (U) Background: Tanzania and Zanzibar make up a government that does not quite meet the definitions of a union or a federal republic. There is one central government and a Parliament that passes laws that are applicable to both the Mainland and Zanzibar. However, Zanzibar has its own House of Representatives and its own President. In addition, constituencies in Zanzibar elect a number of members to the national Parliament. Police, financial issues (including banking), and issues of national security are Union matters and apply to both the Mainland and Zanzibar. However, issues regarding criminal law are not Union issues, unless they involve national security, hence the need for two Directors of Public Prosecutions. Tanzania currently has 28 banks. Most financial transactions are conducted outside the formal financial system through alternative remittance systems (see paragraph 14). The public prefers using the alternative remittance systems due to the absence of banks in rural areas, because bank fees are high and the process of transferring money is inefficient and can take longer. Officials estimated that less than 10 percent of the population uses the formal banking system. For a better analysis of the criminal justice sector structure of Tanzania, please refer to the Department of Justice's Office of Prosecutorial Development, Assistance and Training's assessment from January 2004.

Identification of customers

14. (SBU) Circular No. 8, issued by the BoT, requires banks and other financial institutions to identify their customers upon opening an account and conducting transactions, and they must retain such documents for 10 years. The circular does not give an exhaustive list of identification documents, but there is an obligation to establish if somebody is acting on their own accord or on behalf of someone else. Bankers have indicated that they have problems obtaining reliable identification documents, due to the fact that most people in Tanzania do not have an official identification document. Bankers indicated that a more enhanced ongoing customer due diligence procedure is being conducted, with a view to the detection of suspicious transactions.

Reporting of suspicious transactions

15. (SBU) Banks and other financial institutions (defined as any person authorised by the BoT to engage in banking business not involving the receipt of money on current account subject to withdrawal by check) have the obligation under Circular No. 8 to report suspicious transactions relating to money laundering to the BoT. Circular No. 8 does not cover instances of suspected terrorist financing. The annex to the Circular gives examples of suspicious transactions. The bank will do an initial investigation and then, if reported to the BoT, the BoT will do an investigation before determining if a report should be sent to the police, who will then conduct their own investigation. Feedback varies widely (the Mainland seems to be better than Zanzibar). Some of the foreign banks have indicated that they report first to their own headquarters before reporting to the BoT because of the lack of a safe harbour provision, and then the headquarters decides whether to report to the BoT.

16. (SBU) Circular No. 8 requires every bank or financial institution to formally designate an officer responsible for compliance with the regulations. Procedures and a training program for personnel should be in place.

17. (SBU) As mentioned above, the circular does not provide for a safe harbour provision, and bankers have indicated that they feel uncomfortable filing reports. "Tipping off" is prohibited. The BoT indicated that it has received less than 10 suspicious transaction reports since the reporting requirement came into effect.

18. (SBU) The BoT sends the UN list of designated terrorists and terrorist organizations to all of the banks, who review their accounts against the list to see if they have any accounts in the name of anyone on the list. The bankers stated that, in general, they did not review the list when new accounts are opened or when transactions are conducted; however, a couple of international bank branches indicated their local headquarters have automated tools to check their systems.

Training

19. (SBU) The BoT provides training for its own staff. Banks indicated that they have internal training procedures and receive training from international banks and donors. It appears that banks on the Mainland were more knowledgeable about anti-money laundering and counterterrorist financing (AML/CTF) issues than banks and branches of banks in Zanzibar. The banks said they need more training and guidance in order to be able to comply with AML/CTF regulations.

Supervision/Compliance

110. (SBU) Money laundering is not viewed as a serious problem in Tanzania. The BoT supervises banks and non-banking financial institutions. The BoT website indicates that one bureau de change is registered as a non-banking financial institution, because it receives deposits. The financial sector of Tanzania also includes numerous (small) savings and credit cooperative societies (SACCOs), and micro-finance companies, that are not yet under any supervision. However, new legislation is intended to bring the larger of these institutions under supervision by BoT.

111. (SBU) It is not clear if all supervised institutions mentioned above are subject to on-site inspections. Examinations include selected branches of banks. The BoT examination manual includes questions on compliance with AML regulations. The BoT has 60 examiners for all banking

supervision throughout the country, but banks on the Mainland said that the BoT examiners did not seem to be specifically trained for AML/CTF supervision. Six representatives from the GoT attended the U.S. AML/CTF training for foreign supervisors in March 2005.

12. (SBU) The BoT has full access to the files of the supervised institutions and can share this information with the police. The BoT reported difficulties in sharing information with foreign supervisors, but indicated this problem is being addressed and the situation is improving.
13. (SBU) Based on Circular No. 8, the BoT has the power to impose administrative sanctions for failure to comply with the regulations both by the covered institution as well as by any director, offices or staff of a covered institution.
14. (SBU) Presently, there are no requirements for gold or gem dealers, dealers in high value goods, insurance companies, or gatekeepers. Several OTA trip reports stated that casinos are subject to AML/CTF requirements, based on the Gaming Act of 2003 and Tanzania Gaming board regulations. The Gaming Act was developed with assistance of the US IRS, which provided assistance to the Tanzania Revenue Authority under a USAID funded technical assistance program. Casinos will also be required to report suspicious transactions under the amendments to the Proceeds of Crime Act.

Alternative Remittance Systems

15. (SBU) Both Western Union and Moneygram operate in Tanzania and Zanzibar. Western Union operates only through the state-owned Postal Bank system. The BoT indicated that all international transfers must go through the banking system. The Postal Bank indicated that Western Union transfers are only for educational, medical or business transactions. In Zanzibar, the average outgoing remittances total roughly 15 million Tshillings daily; the average incoming transfers are 100,000 - 6 million Tshillings daily (at the time of the assessment, the exchange rate was approximately 1100 Tshillings to 1 USD). The economy in Tanzania is, to a large extent, cash based. Only a small portion of the money flow goes through the 28 banks and non-banking financial institutions. Due to the nature of the economy, Zanzibar authorities stated hawala is frequently used to transfer money among family members and from workers abroad. On the Mainland the bus system is used to transport cash. An individual will give the money to the driver, who gives the sender a password to provide to the recipient of the funds. When the bus arrives, the recipient provides the password and gets the money.
16. (SBU) There are presently no cross-border cash controls. There are no registration requirements or compliance reviews. The use of alternative remittance systems is viewed as a normal method to move cash and the risk inherent in such systems is perceived as the risk of theft or non-receipt of the funds. It is not considered to be a risk in relation to money laundering or terrorist financing.

Pending Legislation

17. (SBU) Amendments to the Proceeds of Crime Act, 1991, (POCA) are pending. These amendments will extend the definition of covered institutions to include operators of gaming enterprises, cash dealers, insurance brokers, intermediaries, securities and futures brokers and dealers, dealers in gold, precious metals and stones, travellers checks or financial instruments, investment fund managers, lawyers, accountants, and real estate agents. The customer identification and suspicious transaction reporting requirements also will be incorporated in the new law. The new law will add a safe harbour provision but, if the current language is adopted, "tipping off" will no longer be prohibited. The proposed provision only addresses situations where the banker believes an investigation will be jeopardized if the person whose activities are being reported or a third party is told about the report.

Financial Intelligence Unit (FIU)

18. (SBU) Tanzania does not currently have an FIU. The amendments to the POCA provide for the establishment of an FIU that will be an independent entity within the Ministry of Finance. In addition to its basic functions of receiving, analyzing and disseminating information on suspicious transaction reports, the proposed FIU will also, in consultation with the relevant regulatory authorities, issue reporting and recordkeeping guidelines to banks and other

reporting entities. It will also liaise with investment and business licensing authorities in vetting prospective investors.

19. (SBU) The amendments also provide for the establishment of a Multi-Disciplinary Committee on Anti-Money Laundering that will serve as a policy advisory body for the GoT. The Committee will be composed of representatives from various agencies, including the Ministries of Finance and Foreign Affairs, the BoT, the Attorneys General's Chambers of Tanzania and Zanzibar, the Police, and the Capital Markets and Securities Authority, in addition to the Commissioner of the FIU.

Legal Framework

20. (SBU) The POCA currently provides the only legal mechanism for the investigation and prosecution of money laundering crimes. Under this law, only money laundering predicated upon drug trafficking is an offense. Although the law states that it applies to both Mainland Tanzania and Zanzibar, the Zanzibar Director of Public Prosecutions explained that unless a penal law affects national security, it is not a "Union" matter and thus, the POCA would be unconstitutional if applied to Zanzibar. In that case, only Mainland Tanzania has a money laundering offense. However, because the FIU is a financial matter, the reporting requirements created by the new amendments will apply to Zanzibar.

21. (SBU) The POCA creates several types of narcotics predicated money laundering offenses with seizure and forfeiture provisions for money laundering cases directly related to narcotics-trafficking. All forfeiture in Tanzania is conviction based. If a conviction is obtained, the frozen assets are forfeited and turned over to the general treasury fund. There is no separate asset forfeiture fund. The police manage seized and forfeited assets; there is no specialized bureau for managing seized or forfeited assets. The Ministry of Foreign Affairs receives all foreign requests for mutual legal assistance, and passes the request to the Mainland Attorney General or to the Attorney General of Zanzibar, as appropriate.

22. (SBU) The Government of Tanzania is currently preparing new amendments to the POCA, which will expand the predicate offenses for money laundering beyond crimes involving drug-trafficking, to include terrorism, terrorism financing, illicit arms trafficking, corruption or bribery, fraud, counterfeiting, armed robbery, theft, insider dealing and market manipulation, or any other offense that the Minister of Finance might declare. The GoT hopes to introduce the amendments in the April session of Parliament; otherwise, it is doubtful the amendments will be enacted before February 2006. Under this bill, money laundering continues to be a separate, autonomous offense, without a requirement to obtain a conviction for the underlying predicate crime, and extends to anyone who acquires, possesses, uses or administers property, which he knows or ought to know is the proceeds of the predicate offenses. The law also criminalizes acts of concealment if the person knows or ought to have known the property is the proceeds of the predicate offenses. One part of the law appears to create a strict liability offense, making criminal any transaction involving the proceeds of the predicate offense. In discussing this provision with the National Anti-Money Laundering Committee, it was clear that this was not the drafters' intent, and the committee asked for assistance in correcting the language. The team provided comments on the draft amendments to the drafting committee by separate correspondence. (Some members of the FSAT who attended the ESAAMLG meeting the following week had the opportunity to discuss the comments the team provided to the drafting committee, who was also in attendance. The drafting committee had a number of general questions about an AML regime, and some very specific questions on the structure and function of an FIU.) The bill adds asset forfeiture sharing provisions, conspiracy as a criminal offense, creates corporate criminal liability, provides law enforcement the ability to conduct electronic surveillance and freeze assets, and provides witness and judicial officer protection measures such as trial by video link, relocation, and non-disclosure of a witness' identity.

23. (SBU) Terrorism and terrorist financing are defined in The Prevention of Terrorism Act of 2002, which defines terrorist activities and establishes punishments of up to 30 years in prison. The Act also makes it possible to administratively freeze the assets of UN designated terrorists or terrorist organizations as well as those added to a list by the Minister of Home Affairs. All persons are required to report suspicious transactions related to terrorism to the police. The Permanent Secretary at the Ministry of Foreign Affairs indicated that there is a multi-disciplinary government group (consisting of officials from

the Ministries of Foreign Affairs, Home Affairs, Finance, Justice, the BoT, the Police and the President's office,) that reviews information coming from the UN on persons and entities relating to terrorism. On mutual legal assistance matters pertaining to terrorism, the Inspector General of the Police or Commissioner of the Police is the central authority for foreign requests.

Law Enforcement

124. (SBU) Lacking the technical and practical expertise, enforcement authorities find it difficult, if not impossible, to investigate and prosecute sophisticated criminal organizations and complex crimes such as money laundering. Despite having a money laundering law for over ten years, none of these offices has dedicated specific resources for investigating and prosecuting money laundering. There is neither a specialized prosecutorial unit for the prosecution of money laundering nor a specialized financial investigations unit within the police. Additionally, the prosecutors' offices do not have any dedicated financial analysts or forensic accountants to assist them with the preparation of their cases. Nationwide, there are thousands of criminal cases under investigation, and there are not sufficient police investigators or prosecutors to adequately handle the load.
125. (SBU) In addition to the lack of qualified personnel to investigate and prosecute money laundering, the personnel currently available do not have the necessary knowledge or experience to conduct effective financial investigations or the technical tools to assist them in these investigations. Currently there are no prosecutors trained to conduct financial investigations, and the DPPs for the Mainland and Zanzibar desperately need financial investigative training for members of their offices, police investigators and judges. In January 2005, OTA conducted a Financial Investigation training course for 40 Tanzanian officials from the Police, DPP and Public Corruption Bureau. This training included presentations by Tanzania experts on their laws, criminal procedures and investigative techniques. The DPP for the Mainland has identified six prosecutors to be specially trained in the prosecution of money laundering offenses, but it is not clear whether these prosecutors will be formed into a specialized unit. Thus, the training of investigators, prosecutors and judges is a clear and immediate necessity to enable them to effectively carry out their responsibilities to identify, investigate and prosecute money laundering and the financing of terrorism.

Non-Governmental Organizations (NGOs)

126. (SBU) The GoT created the Office of the Registrar of NGOs/Charities, located in the Office of the Vice President. The office is only six weeks old, despite the fact that The Non-Governmental Organizations Act (NGOA) was passed in 2002, because it took over two years to write the implementing regulations. The NGOA requires the registration of all NGOs and each NGO, with certain exceptions for very small, local organizations, is required to file an audited financial statement and list of activities every year, which are available to the public. However, an NGO is not required to indicate its sources of funding. Various officials estimate that there are between 4,000 and 6,000 NGOs in Tanzania. The NGOA also requires the creation of a board to certify new NGOs, as well as the creation of a council that coordinates all NGOs operating in Mainland Tanzania (this law does not apply to Zanzibar). The Registrar stated that his office will create a database of all NGOs and a website where information on registered NGOs will be posted.
127. (SBU) Failure to comply with the NGO law can result in the rescission of registration. If the NGO continues to operate, it is up to other agencies or law enforcement to investigate and prosecute.
128. (SBU) Registration occurs on three levels: district, if operating in one district, regional, if operating in a region larger than a district, and national if it is an international NGO or if its scope of operation extends beyond more than one region. Eventually, each district will have an official representative of the Registrar's office, who will be responsible for registering NGOs in that district. There are 136 districts in the Mainland. It is unlikely that each district office will be computerized or able to plug into a database because of a lack of funds. The district representative will have to use the postal service to mail registration and other information back to the Registrar's office in Dar es Salaam.
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Recommendations

129. (SBU) The GoT has ratified the International Convention for the Suppression of the Financing of Terrorism and within the next year anticipates ratifying the Palermo Convention, and, as a member of ESAAMLG, agreed to application of the FATF Forty Recommendations and the Nine Special Recommendations on Terrorism. To fully comply with these conventions and recommendations, the following additional measures must be taken on both the Mainland and in Zanzibar:

--Enact, without further delay, the amendments to the POCA to expand the predicates for money laundering, create an FIU, expand customer identification requirements, and mandate suspicious transaction reporting by a wide-range of reporting entities;

--Criminalize money laundering as it relates to activities in Zanzibar and ensure that such law provides powers to identify, seize, freeze, and forfeit assets involved in money laundering;

--Examiners responsible for reviewing banks and financial institutions for compliance should receive specialized training in AML/CTF;

--Bankers should receive awareness and specialized training on money laundering and terrorist financing;

--Tipping off by personnel of banks, financial institutions and other entities that are covered by the revised proceeds of crime bill, and government employees who deal with suspicious transaction reports should be strictly prohibited in all cases;

--The GoT should write regulations to implement the changes to the Proceeds of Crime Act and the BoT should rescind Circular No. 8 once it is replaced by the new regulations, as soon as possible;

--The GoT should, as expeditiously as possible in order not to delay the coming into force of the new act, ensure that there is adequate supervision, including reviews for compliance, of all institutions covered by the revised Proceeds of Crime Bill and of alternative remittance systems;

--The GoT should arrange for an awareness campaign and training for all covered entities to be sure they understand their responsibilities and are able to comply;

--The language in the FIU section of the bill needs to be clarified, because it currently states that the Committee will oversee the operations of the FIU. If the FIU is to be truly independent, then the language should be changed to reflect this. Otherwise, the precise relationship between the FIU and the Committee needs to be clarified;

--The FIU should be specifically authorized to receive and analyze suspicious transactions related to terrorist financing;

--Once the FIU is established, the staff should receive adequate training so it can fulfill its responsibilities and achieve membership in the Egmont Group;

--Expand the number of prosecutors and law enforcement agents dedicated to the investigation and prosecution of money laundering and the financing of terrorism;

--Create a specialized unit within the prosecutor's office to investigate and prosecute all types of money laundering cases throughout Mainland Tanzania;

--Create a specialized unit within the prosecutor's office to investigate and prosecute all types of terrorism and the financing of terrorism;

--Train prosecutors and investigators on how to effectively conduct a financial investigation, including training to increase their understanding of financial records and corporate documents and their applicability to criminal prosecutions for money laundering;

--Provide basic training for investigators to include case management, evidence collection and safeguarding, forensics, and forfeiture;

--Provide task force training to the various agencies with reporting, investigating and prosecuting responsibilities under the new amendments;

--Establish a Police Task Force that would include elements from key government organizations required by law to investigate criminal acts, such as customs, border patrol,

and intelligence agencies;

--Train prosecutors, judges and investigators to enhance their knowledge and understanding of the money laundering law and the complexities of "following the money";

--Train prosecutors and investigators to enhance their abilities to gather evidence from foreign countries on money laundering and terrorism;

--Consider enacting additional legislation to create a non-conviction based forfeiture system, a separate bureau for the management of seized and forfeited assets, and the creation of an asset forfeiture fund;

--The NGO Registrar's office should be required to report suspicious transactions to the FIU;

--NGOs should be required to list their sources of funding;

--The Office of Registrar of NGO/Charities should be funded and staffed at levels to permit follow up with organizations that fail to file annual reports, coordinate with other State bodies on organizations that are de-registered, and verification of annual reports filed by organizations; and

--Implement cross-border reporting requirements.

END TEXT OF FSAT REPORT

130. (SBU) Post comment: USG efforts to combat money laundering and the finance of terrorism are an important part of post's MPP. Post has supported the US Treasury's Office of Technical Assistance (OTA) in its two-year work plan to provide support to the GOT in developing an AML/CFT regime and in training examiners, investigators, and prosecutors. Progress on new legislation has been slow, in part because the issue is not the GOT's highest priority. Still, GOT officials recognize the weaknesses of their financial regulatory system and are willing partners with the USG to address those weaknesses. Post will continue to support USG programs that can help the GOT implement the recommendations listed above. End comment.

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